

**DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 03-0258P
Tax Administration—Penalty
Tax Administration—Interest
For the Years 2000 & 2001**

NOTICE: Under Ind. Code § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Tax Administration—Penalty

Authority: 45 IAC 15-11-2

Taxpayer protests the 10% negligence penalty.

II. Tax Administration—Interest

Authority: IC § 6-8.1-10-1

Taxpayer protests the interest levied upon the base use tax owed to the Department.

STATEMENT OF FACTS

Taxpayer is a contractor who installs in-ground pools on a lump sum contract basis. Taxpayer also sells pool materials and supplies at retail.

The penalty was proposed in the first instance because the auditor determined taxpayer had not self-assessed and remitted use tax even though taxpayer was aware of its duty to do so. The current audit, taxpayer's first, assessed additional use tax because, although taxpayer has a use tax accrual program, a significant number of invoices showed no use tax was accrued. Further, taxpayer also collected sales tax on a pool package for materials only, but did not report the sales tax and did not remit the sales tax collected.

I. Tax Administration-Penalty

DISCUSSION

Penalty assessments depend on a number of factors outlined in the statute and regulation cited *supra*, and can be waived based on a showing of sufficient cause:

Negligence, on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

The Department finds the taxpayer did not act with reasonable care in that taxpayer did not report a sale as taxable even though taxpayer collected sales tax on the transaction. Taxpayer did not remit the sales tax collected. Taxpayer admits making mistakes; that admission is an admission of negligence. The Department denies taxpayer's request to abate the 10% penalty assessment.

FINDING

Taxpayer's request to abate the 10% negligence penalty is denied.

II. Tax Administration—Interest

DISCUSSION

Interest is imposed by statute, and cannot be waived.

FINDING

Taxpayer's request to abate the interest on the assessment is denied.